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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

DONALD SHERMAN,  
  
 Plaintiff,  
  
 v.

HAROLD WICKHAM, in his personal  
 capacity; KIM THOMAS, in his personal  
 capacity; WILLIAM GITTERE, in his  
 personal capacity and in his official capacity as  
 Deputy Director of Operations of the Nevada  
 Department of Corrections; BRIAN  
 WILLIAMS, in his official capacity as Deputy  
 Director of Programs of the Nevada  
 Department of Corrections; WILLIAM  
 REUBART, in his personal capacity and in his  
 official capacity as Warden of Ely State Prison;  
 DAVID DRUMMOND, in his official capacity  
 as Associate Warden of Ely State Prison; and  
 TASHEENA COOKE, in her official capacity  
 as Associate Warden of Ely State Prison,  
 Defendants.

Case No. 3:21-cv-00168-ART-CSD

**JOINT STIPULATION TO STAY  
 SCHEDULING ORDER AND  
 DISCOVERY PLAN (DKT. NO. 29)**

**(First Request)**

Hon. Anne R. Traum  
 Hon. Craig S. Denney

**JOINT STIPULATION TO STAY SCHEDULING ORDER AND DISCOVERY PLAN**

Pursuant to LR IA 6-1 and LR 26-3, counsel for Plaintiff Donald Sherman and counsel for Defendants Harold Wickham, Kim Thomas, William Gittere, Brian Williams, William Reubart, David Drummond, and Tasheena Cooke respectfully submit this joint stipulation to stay the current case management deadlines in the Court's April 4, 2022 Scheduling Order and Discovery Plan Re: Pro Se § 1983 Actions, *see* Dkt. No. 29 (the "Order"), pending the parties' Rule 26(f) conference and submission of a revised stipulated discovery plan and case management order pursuant to this Court's Local Rules.

The current scheduling Order sets a fact discovery deadline of October 1, 2022. *See* Order at 6. This Stipulation is not being submitted within 21 days of the deadline to complete fact discovery because counsel for Defendants received orders to participate in active military service from August 25, 2022 until September 19, 2022, and was unable to meet and confer regarding a potential stipulation to stay or amend the Order until September 21. This is the first stipulation to stay the Order and extend discovery deadlines.

The Stipulation is being filed, and a stay of the current case management deadlines is being requested, to permit the parties to further confer about a workable case management schedule to govern Plaintiff's First Amended Complaint. Plaintiff filed a First Amended Complaint on July 18, 2022, which added five new defendants—Gittere, Williams, Reubart, Drummond, and Cooke—in addition to Defendants Wickham and Thomas, who were named in Plaintiff's original Complaint. *See* Dkt. No. 57. The newly added Defendants returned waivers of service of the summons on September 23, 2022, and currently must respond to the First Amended Complaint by October 18, 2022. *See* Dkt. Nos. 65–69. Because the newly added Defendants have not appeared in this action, Plaintiff will not be able to complete discovery by the deadlines set in the Order. In the interest of assisting the Court in creating an acceptable case management schedule, counsel for the parties wish to confer about revised case management dates and submit such proposed dates to the Court for its approval.

1 Counsel for the parties have met and conferred regarding this Stipulation and proposed  
2 stay, and no party objects to the requested stay. This Stipulation is being made in good faith and  
3 not for the purpose of delay.

#### 4 **DISCOVERY COMPLETED TO DATE**

5 Plaintiff and Defendants Harold Wickham and Kim Thomas, who were named in the  
6 original Complaint, have exchanged their mandatory initial disclosures as required by the Order.  
7 *See* Dkt. No. 29 at 2. Plaintiff propounded written discovery on Defendant Harold Wickham.  
8 Defendant Wickham timely responded to the written discovery. Plaintiff has not yet propounded  
9 written discovery on any of the newly added Defendants, who have not yet appeared in this case.  
10 To date, the parties have not scheduled any depositions or engaged in expert discovery.

#### 11 **DISCOVERY YET TO BE COMPLETED**

12 Plaintiff is prepared to propound written discovery on the newly added Defendants once  
13 they have appeared in this case and discovery is otherwise permitted under the Federal Rules of  
14 Civil Procedure and this Court's Local Rules. After written discovery has been propounded and  
15 responded to, Plaintiff intends to notice depositions consistent with the Federal Rules of Civil  
16 Procedure and the Local Rules. Similarly, Defendants intend to serve written discovery and  
17 notice a deposition of the Plaintiff according to applicable rules. The parties will meet and  
18 confer regarding expert discovery and will submit an appropriate stipulation, consistent with the  
19 Local Rules, for the Court's consideration if expert discovery is anticipated.

#### 20 **REASONS FOR REQUESTED STAY**

21 This Stipulation is being filed because Plaintiff added additional defendants in the First  
22 Amended Complaint, which was filed July 18, 2022. *See* Dkt. No. 57. The newly added  
23 Defendants returned waivers of service of the summons on September 23, 2022, and currently  
24 must respond to the First Amended Complaint by October 18, 2022. *See* Dkt. Nos. 65–69; *see*  
25 *also* Fed. R. Civ. Proc. 4(d)(3). Because the newly added Defendants have not yet appeared in  
26 this action, and Plaintiff may not propound discovery on the new defendants until after a  
27 Rule 26(f) conference is held, *see* Fed. R. Civ. Proc. 26(d)(1), the parties agree that the Order's  
28 October 1, 2022 deadline to complete discovery will not provide sufficient time for the parties to

1 complete discovery. Once the newly added Defendants appear in this action, the parties will  
2 complete a Rule 26(f) conference and submit a proposed discovery plan and scheduling order  
3 within the time periods set by this Court. *See* LR 26-1(a).

#### 4 **PROPOSED TIMELINE**

5 The current deadline for discovery is October 1, 2022. *See* Order at 6. Through this  
6 Stipulation, the parties hereby respectfully request that the Court enter an order staying the  
7 currently imposed case management deadlines set in the Order until such time as the parties are  
8 able to complete a Rule 26(f) conference and submit a stipulated discovery plan and scheduling  
9 order following the newly added Defendants' appearance in this action as required by the Local  
10 Rules, *see* LR 26-1(a), and this Court enters a new scheduling order. The parties anticipate they  
11 will be filing a joint motion for a revised scheduling order not later than November 15, 2022.  
12 This is based on the assumption that the newly added defendants will file a timely answer on or  
13 before October 18, 2022, that the parties will meet and confer pursuant to Rule 26 shortly  
14 thereafter and that agreed upon revised case management dates will be submitted to the Court,  
15 via Joint Motion shortly thereafter.

16 Therefore, **IT IS HEREBY STIPULATED AND AGREED** between the parties,  
17 through their counsel, and subject to the Court's approval, that the Court's April 4, 2022  
18 Scheduling Order and Discovery Plan Re: Pro Se § 1983 Actions, *see* Dkt. No. 29, is stayed until  
19 the parties complete a Rule 26(f) conference and submit joint motion to revise the current case  
20 management deadlines following the appearance of the Defendants added to the First Amended  
21 Complaint as required by the Local Rules, *see* LR 26-1(a), and this Court enters a new  
22 scheduling order.

1 Respectfully submitted,

2 Dated: September 27, 2022

O'MELVENY & MYERS LLP

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4 By: /s/ Meaghan VerGow  
Meaghan VerGow  
Attorneys for Plaintiff Donald Sherman

5  
6  
7 Dated: September 27, 2022

LAW OFFICES OF KRISTINA  
WILDEVELD & ASSOCIATES

8  
9 By: /s/ Lisa A. Rasmussen  
Lisa A. Rasmussen  
Attorney for Plaintiff Donald Sherman

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11  
12 Dated: September 27, 2022

OFFICE OF THE NEVADA ATTORNEY  
GENERAL

13  
14 By: /s/ Austin T. Barnum  
Austin T. Barnum  
Attorney for Defendants Harold Wickham and  
Kim Thomas

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18 **IT IS SO ORDERED.**

19 Dated this 28th day of September, 2022.

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21   
22 Honorable Craig S. Denney  
United States Magistrate Judge